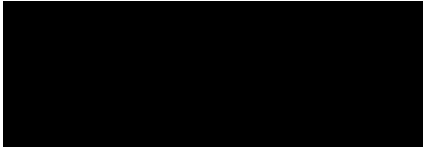


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE:

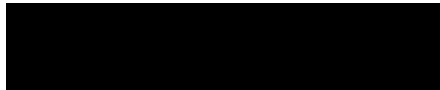


Office: NEWARK, NEW JERSEY

Date: MAR 01 2004

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

PUBLIC COPY

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Haiti. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact while attempting to procure admission into the United States on July 16, 1993. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and adjust his status under the Haitian Refugee Immigrant Fairness Act of 1998, Public Law 105-277 (HRIFA).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated November 18, 2002.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 902 of HRIFA provides that an applicant who is inadmissible under section 212(a)(6)(C) of the Act is ineligible for adjustment of status under HRIFA unless he or she receives a waiver of that ground of inadmissibility.

Section 212(i) of the Act provides that:

- (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that July 16, 1993 the applicant sought to procure admission into the United States by presenting a photo-substituted Haitian passport. The applicant admitted that he paid \$2,500.00 for the document and stated that he used the illegitimate document to enter the United States to save his life from the Haitian authorities.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

On appeal the applicant states that his spouse and U.S. citizen children will suffer extreme hardship if his waiver application is denied and he is forced to depart the country.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The assertions regarding the hardship of applicant's children would suffer will thus not be considered. Furthermore, the record does not contain any documentary evidence regarding his spouse's immigration status in the United States. It has not been shown whether the applicant's spouse is a U.S. citizen or lawful resident of the United States and therefore it is unclear whether any assertion regarding hardship that would be imposed upon her can be considered. In any event, the record does not establish that his wife would suffer extreme hardship, so her immigrant status is irrelevant.

A review of the documentation in the record reflects that the applicant has failed to show that he has a qualified family member in order to be eligible to file for a waiver under section 212(i) of the Act or if he does, that she would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.